

**Memorandum of Decision: 01-20200273R
Individual Indiana Income Tax
For the Years 2017**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

On their amended 2017 amended Indiana income tax return, current Indiana residents were entitled to exclude from their income deferred compensation attributable to their former out-of-state employers.

ISSUE

I. Individual Income Tax - Income Sourced to Another State.

Authority: *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); [45 IAC 3.1-1-7\(3\)](#); Income Tax Information Bulletin 28 (November 2016); Black's Law Dictionary (9th ed. 2009).

Taxpayers argue that they are entitled to a refund of income tax withheld on their behalf by out-of-state employers because they lived outside Indiana during the time the income was originally earned.

STATEMENT OF FACTS

Taxpayers are current Indiana residents who previously lived and worked in another state. Taxpayers filed a 2017 amended Indiana individual income tax return (IT-40X). The Indiana Department of Revenue ("Department") reviewed the return. In a letter dated August 2019, the Department explained that it was denying Taxpayers' request for a refund "because you have amended to claim deductions schedule 2 - deductions with invalid codes."

Taxpayers disagreed with the Department's decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers' representative explained the basis for the protest. This Memorandum of Decision results.

I. Individual Income Tax - Income Sourced to Another State.

DISCUSSION

The issue is whether Taxpayers have established that they were entitled to deduct from their reported income the two streams of income reported on schedule two ("Deductions") of their 2017 amended Indiana income tax return.

When a taxpayer challenges taxability in a specific instance, the taxpayer is required to provide documentation explaining and supporting its challenge. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

The two streams of income consisted of - as noted on their return - approximately \$620,000 of "out of state deferred wage" detailed in a note attached to the return. This item removes the W2 amount from [trust company]. The amount in question is deferred wages and/or bonuses earned prior to March 2016 at [former Texas employer].

The second stream of income consisted of approximately \$350,000 of "out of state wage" also explained in the same note attached to their amended return. "This item removes the W2 from [out of state employer]."

In both instances, Taxpayers explained that "[a]ll amounts are being paid out in less than 10 years."

As authority for their position that the two income amounts should have been removed, Taxpayers cited to [45 IAC 3.1-1-7\(3\)](#) as follows:

Deferred compensation, other than that from a qualified retirement plan as described above, is direct attributable to services performed, and is taxed by the state where the services were performed.

It is Taxpayers' assertion that the income was paid to them for services performed outside Indiana on behalf of their former Texas employer and that, in both instances, the payments were "deferred income." ("Money received at a time later than when it was earned, such as check received in January for commissions earned in November.") Black's Law Dictionary 831 (9th ed. 2009).

In further support of their argument, Taxpayers cite to Income Tax Information Bulletin 28 (November 2016), 20161228 Ind. Reg. 045160560NRA, which provides:

Deferred compensation other than from a qualified retirement plan, accumulated vacation, bonus, severance, sick pay, or income from a stock option plan are attributable to services performed and are taxable by the state where the services were performed.

In support of their argument, Taxpayers provided copies of various documents intended to establish that the two streams of income consisted of deferred compensation which should not have been sourced to Indiana. Taxpayers provided copies of their employer's "executive deferred compensation plan," copies of the employer's "long term incentive plan," copies of the 2014 "award agreement grant letter" stipulating the deferred compensation dates, copies of the investment company's "brokerage statements" and that company's Security and Exchange Commission annual report. In addition, Taxpayers provided an explanation of the compensation listed on their amended return which "tied out" the amount of deferred compensation to the gross income reported on that return.

In this case, Taxpayers have provided the necessary "documentation explaining its challenge" to the Department's decision "sourcing" the income to Indiana and denying the refund. The income consisted of deferred income which should have been sourced to the state in which it was first earned pursuant to [45 IAC 3.1-1-7\(3\)](#) and the Department's own Income Tax Information Bulletin 28 (November 2016).

FINDING

Taxpayers' protest is sustained.

October 20, 2020

Posted: 12/30/2020 by Legislative Services Agency
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